COURT, U. S.
Supreme Court, U. S.
FILED
FEB 18 1975
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 74-1031

STATE OF WEST VIRGINIA, EX REL,
WALLACE L. FILES,

Petitioner.

v.

EDGAR F. HEISKELL, III,
SECRETARY OF STATE OF WEST VIRGINIA,
IN HIS OFFICIAL CAPACITY,
AND ALLEN E. GOLDSTROM,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Clarence E. Martin, Jr.
119 S. College Street
Martinsburg, West Virginia
Counsel for Petitioner

TABLE OF CONTENTS

	Page
Jurisdictional Statement	1
The Opinion Below	1-2
Statement of the Grounds on Which the Jurisdiction of this Court is Invoked	2-3
Questions Presented	3
Constitutional Provisions Involved	3-4
Statutory Provision Involved . . .	4-5
Statement of Facts	5-7
Reasons for Granting the Writ . .	8-12
Conclusion	12
Appendix A	1
Appendix B	2-8

IN THE

SUPREME COURT OF THE UNITED STATES

No.

STATE OF WEST VIRGINIA, EX REL,
WALLACE L. FILES,

Petitioner.

v.

EDGAR F. HEISKELL, III,
SECRETARY OF STATE OF WEST VIRGINIA,
IN HIS OFFICIAL CAPACITY,
AND ALLEN E. GOLDSTROM,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA

The petitioner, WALLACE L. FILES, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Appeals of West Virginia entered on the 4th day of December, 1974.

JURISDICTIONAL STATEMENT

THE OPINION BELOW

This was an original proceeding by the petitioner by way of a petition in

mandamus filed in the Supreme Court of Appeals of West Virginia as provided by statute and the constitution of that state; that Court refused to docket the petition for hearing by an order entered on the 13th day of December, 1974; no written opinion was delivered; no rehearing was had. A copy of this order appears as Appendix A.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

1. This was an original proceeding in mandamus against the appellees challenging, ab initio, the constitutional validity of the proviso of a reapportionment statute of a legislative apportionment statute, Code 12-2(d) (35) appearing herein as Appendix B, of West Virginia, providing for the apportionment and election of members of the House of Delegates, one body in a bicameral legislature, on the ground that it violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, as well as the due process clause, by discriminating against the petitioner in the election process.

2. The judgment sought to be reviewed is the ruling of the Supreme Court of Appeals entered on December 13, 1974, denying petitioner a hearing on his petition seeking a declaration of his right to be certified as a duly elected member of the House of Delegates.

3. Jurisdiction of this Court is invoked under 28 U.S.C., sec. 1257(3).

Cases sustaining the jurisdiction of this Court, inter alia, are:

Reynolds v. Sims, 377 U. S. 533, 12 L. Ed.2d 506, 84 S. Ct. 1362.

Swann v. Adams, 378 U. S. 553, 12 L. Ed. 2d 1033, 84 S. Ct. 1904; 385 U. S. 440, 17 L. Ed.2d 501, 87 S. Ct. 569.

Moore v. Ogilvie, 394, U. S. 814, 14 L. Ed.2d 1, 89 S. Ct. 1493.

QUESTIONS PRESENTED

1. Whether the proviso of the statute, West Virginia Code 1-2-2(d)(35), which disqualifies a candidate for legislative office, who receives more votes in a legislative district election contest than an opponent, is repugnant to the equal protection clause of the Fourteenth Amendment?

2. Is such proviso discriminatory and, therefore, repugnant to such amendment, because of residential conditions?

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment XIV * * * No State shall make or enforce any law which shall abridge the privilege or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without the due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article 6, Section 6 of the West Virginia Constitution:

> "For the election of delegates, every county containing a population of less than three fifths of the ratio of representation for the house of delegates, shall, at each apportionment, be attached to some contiguous county or counties, to

form a delegate district".

Article 6, Section 7 of the West Virginia Constitution:

"After every census the delegates shall be apportioned as follows: The ratio of representation for the house of delegates shall be ascertained by dividing the whole population of the State by the number of which the house is to consist and rejecting the fraction of a unit, if any, resulting from such division. Dividing the population of every delegate district, and of every county not included in a delegate district, by the ratio thus ascertained, there shall be assigned to each a number of delegates equal to the quotient obtained by this division, excluding the fractional remainder. The additional delegates necessary to make up the number of which the house is to consist, shall then be assigned to those delegate districts, and counties not included in a delegate district, which would otherwise have the largest fractions unrepresented; but every delegate district and county not included in a delegate district, shall be entitled to at least one delegate".

STATUTORY PROVISION INVOLVED

Chapter 3, Article 6, Section 11: Disposition of certificates; procedures thereon.

"* * * Of the certificates respecting the election for delegate or delegates in the legislature,

they (Board of Canvasses) shall transmit one to each person voted for as delegate and shall transmit one to the secretary of state, who shall submit the same to the house, on the first day of the next ensuing session, together with a list of the persons appearing thereby to be elected. * * * The person having the highest number of votes for any one of such offices shall be declared duly elected thereto * * *".

STATEMENT OF FACTS

By virtue of Code 1-2-2(d) enacted in pursuance to the foregoing constitutional mandate of Section 7 in the year 1973, the Legislature of West Virginia fixed the composition of the House of Delegates as one-hundred (100) members, which resulted in a quotient for each delegate of 17,442 persons, being the total state population of 1,744,237, as defined by the 1970 official census of the United States Department of Commerce, divided by one-hundred (100). In accordance with Section 6 of the foregoing constitutional direction, it apportioned the state into some thirty-six (36) delegate districts, some containing a single county or parts of a county with single or multiple delegates, some consisting of more than one county and parts of contiguous counties. The thirty-fifth (35) delegate district, of which the petitioner is a qualified and bona fide resident was created from all of Berkeley County with a population of 36,356 persons, all of Morgan County with a population of 8,547 persons, and

the Shepherdstown Magisterial District of Jefferson County with a population of 3,711 persons, all contiguous, Code 1-2-2(d)(35), and assigned three (3) delegates.

However, in creating this thirty-fifth delegate district, a proviso was added for that district in the following language:

> "Provided, that not more than two delegates shall be elected or appointed who are residents of any single county, or part of a county, within the thirty-fifth delegate district."

At the general election held the 5th day of November, 1974, six persons, including the petitioner, who had been nominated at the primary election, ran as candidates for the House of Delegates from the thirty-fifth delegate district for the three (3) seats allocated in the apportionment statute aforesaid.

The election results are as follows:

Luke E. Terry	7299 votes
Joseph Caudle	6819 votes
Wallace L. Files (petitioner)	6505 votes
Paul L. Hoover	6341 votes
Allen E. Goldstrom	6038 votes
Terry Thomas Harden	5457 votes

Terry, Caudle, Files (petitioner), and Hoover are residents of Berkeley County, Goldstrom and Harden residents of Morgan County.

After the votes were certified to the Secretary of State of West Virginia,

Edgar F. Heiskell, III, respondent herein, he being the officer charged with this duty, petitioner requested him to declare and certify him as the third duly elected delegate from the thirty-fifth district in accordance with West Virginia Code 3-6-11, aforesaid, having received the third highest number of votes. Because Terry and Caudle of Berkeley County received the first and second highest number of votes, the Secretary of State refused this request and declared and certified Allen E. Goldstrom, respondent herein, a resident of Morgan County, as the third duly elected delegate from the district, for a term of two years beginning on the 1st day of January, 1974, although Goldstrom received the fifth highest number of votes, on the ground that he was forced to comply with the direction of the statutory proviso, aforesaid, and certify a candidate from a county other than Berkeley, regardless of the plurality of the petitioner.

The original proceeding in the Supreme Court of Appeals of West Virginia, attacking the constitutionality of Code 1-2-2(d)(35), was then instituted by the petitioner with the results aforesaid. No appearances were made on behalf of the respondents.

The Legislature of West Virginia is currently in regular session and will continue so, unless special sessions are convened, until the 7th day of March, 1975, and not reconvene until the 14th day of January, 1976.

REASONS FOR GRANTING THE WRIT

It is apparent from reading the entire statute, and particularly section (d)(35), and the other provisos, that the legislature gave representation to certain areas within a multi-county district that are too small in population to justify their existence as separate districts entitled to one delegate.

The population of Morgan County is 8,547 persons and the Shepherdstown Magisterial District of Jefferson County 3,711 persons, neither as a separate entity or as a whole meets the necessary quotient of 17,442 persons. However, if a candidate resident in either under the proviso, received one vote, and all other candidates from Berkeley County received more, he would be elected, thus, as here, disenfranchising the majority of the voters in the district, and defeating their will; the entire district must vote as a whole on all candidates in order to secure equality under the rulings of this Court.

The population figures used hereinafter, are taken from the official 1970 census of the United States Department of Commerce. Reference is also had to the statute, Code 1-2-2(d), Appendix B.

The twenty-second district section (d)(25) is composed of Nicholas and Webster Counties, with an allocation of two (2) delegates, the former has a population of 22,522, the latter 9,809 persons, yet, the proviso which limits

the representation to not more than one delegate to a county ensures Webster County a delegate regardless of its small population and the will of the majority of the voters in the district. The same is true in the twenty-third district (d)(23), which is allocated two (2) delegates, only one of which can be elected from a county, among four (4) counties, none of which has the necessary quotient population. These four counties are Braxton with 12,666 persons, Calhoun with 7,046 persons, Clay with 9,330 persons and Gilmer with 7,782 persons. A parallel is the twenty-sixth district (d)(26) composed of Marion County (61,356 persons) and Taylor County (13,878 persons), allocated four (4) delegates, but only three (3) can be elected from one county, also, the twenty-ninth district (d)(29) of Barbour County (14,030 persons) and Upshur County (19,092 persons) allocated two (2) delegates, but only one (1) of which can be elected from one county.

Thus, the intent of the Legislature of West Virginia to preserve the status quo, i.e., the unequal representation of small counties (there was no other reason for its act), is apparently in complete discriminatory opposition to the rulings of the recent apportionment cases of this Court, so that a candidate, with only one vote, can thwart the will of the majority of the voters in a delegate district, regardless of the number of votes cast, resulting in the votes of the smaller counties weighing more than those of the larger counties. The practical effect is a

geographical apportionment as opposed to a constitutional voter apportionment - trees or acres instead of people - with no equality among the latter.

In Gray v. Sanders, 372 U. S. 368, 9 L. Ed.2d 821, 83 S. Ct. 801, it was held that the fundamental principle is equal representation for equal number of people regardless of residence.

In Reynolds v. Sims, 377 U. S. 533, 12 L. Ed.2d 506, 84 S. Ct. 1362, this Court prohibited "the weighting of the votes of citizens differently * * * merely because of where they reside". Without the proviso, the West Virginia Legislature would have met the dictates of this Court but with it, the equal representation required by the Fourteenth Amendment has been destroyed and the votes of those 6,505 persons voting for the petitioner have been debased.

In Swann v. Adams, 378 U. S. 533, 12 L. Ed.2d 1033, 84 S. Ct. 1904, 385 U. S. 440, 17 L. Ed.2d 501, 87 S. Ct. 569, this Court held that the objective is substantial equality of population * * * "so that the vote of any citizen is approximately equal in weight to that of any other citizen".

In Fortson v. Dorsey, 379 U. S. 433, 13 L. Ed. 401, 85 S. Ct. 498, this Court held that it is not constitutional to treat a representative from a multi-district as the representative only of the area where he resides - districts are to be used in multi-districts as a basis for residence of candidates, not for purposes of voting.

Thus, it must be readily obvious that the statute here under attack has created sub-districts in order to favor less populated areas in clear violation of the equal protection clause of the Fourteenth Amendment. The votes of the voters in Berkeley County do not count the same as those in Morgan or Jefferson Counties. Suppose five of the six candidates were from Berkeley County (36,356 persons), only one from the Magisterial District of Jefferson County (3,711 persons). The latter would be elected per se, with only one vote or no votes. The sub-districts are over-represented, therefore.

In Moore v. Ogilvie, 394 U. S. 814, 23 L. Ed.2d 1, 89 S. Ct. 1493, it was held that all who participate in an election must have an equal vote, regardless of their residence in the geographical unit. "The right to have one's vote counted has the same dignity as to the right to put a ballot in the box", to qualify under the amendment. U. S. v. Mosley, 238 U. S. 383, 59 L. Ed. 1355, 35 S. Ct. 904. If the proviso is valid, then the will of all those persons casting their votes for petitioner is set aside; their votes cannot be counted and they have had no voice in the election. Wesberry v. Sanders, 376 U. S. 1, 11 L. Ed.2d 481, 84 S. held that, "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. The proviso debases the votes of those voters by eliminating them in the vote tabulation.

To emphasize the invidious discrimination further, why are not the thirtieth delegate districts (d)(30) composed of Pocahontas County (8,870 persons) and Randolph County (24,596 persons) allocated two (2) delegates, and, the twenty-seventh delegate district (d)(27) composed of Monongalia County (63,814 persons) and three large districts of Preston County (8,139 persons) not burdened with the same provisional limitations as to delegate residency as the thirty-fifth district and others as pointed out above?

It will be noted that no attack on the constitutionality of the statute as a whole is made; it is only upon the proviso of 1-2-2(d)(35). If the proviso is found unconstitutional, the petitioner would then be entitled to his seat. The population apportionment is substantially valid.

CONCLUSION

For these reasons and the further fact that this Court has not considered or passed upon a similar question involving legislative apportionment, a writ of certiorari should issue to review the order of the Supreme Court of Appeals of West Virginia.

Respectfully submitted,

Clarence E. Martin, Jr.
119 S. College Street
Martinsburg, W. Va.
Counsel for Petitioner

APPENDIX A

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 16th day of December, 1974, the following order was made and entered, to-wit:

State of West Virginia ex rel. Wallace L. Files

vs.

Edgar F. Heiskell, III, Secretary of State of State of West Virginia, etc., et al.

On a former day, to-wit, December 13, 1974, came the petitioner, Wallace L. Files, by Clarence E. Martin, Jr., his attorney, and presented to the Court his petition, with certificate of service, and note of argument in support thereof, praying for a peremptory writ of mandamus to be directed against Edgar F. Heiskell, III, Secretary of State of West Virginia, in his official capacity, and Allen E. Goldstrom, as therein set forth. Upon consideration whereof the Court is of opinion that a rule should not be awarded, and the prayer of the petition is therefore denied.

A True Copy.

Attest: /s/ George W. Singleton
Clerk Supreme Court of Appeals

APPENDIX B

§ 1-2-2. Apportionment of membership of house of delegates.

(a) This section shall be known and may be cited as "The House of Delegates Apportionment Act of 1973."

(b) As used in this section:

(1) "County" means the territory comprising a county of this State as it existed on the first day of January, one thousand nine hundred seventy, notwithstanding any boundary changes made subsequent thereto;

(2)"Enumeration district" and "census tract" mean those geographic areas as defined by the bureau of the census of the United States department of commerce for the taking of the one thousand nine hundred seventy census of population and described on census maps prepared by the bureau of the census. Such maps are, at the time of this enactment, maintained by the said bureau of the census and shall be filed in the office of the secretary of state by the clerk of the house of delegates not later than the first day of July, one thousand nine hundred seventy-three;

(3) "Magisterial district" means the territory comprising a magisterial district of this State as it existed on the first day of January, one thousand nine hundred seventy, as defined in the official records of the county courts of the several counties, notwithstanding any boundary changes made subsequent thereto.

(c) If an election precinct in this State, as it exists at the time of passage of this section (April 14, 1973),

includes territory contained in more than one delegate district, as such delegate districts are established by subsection (d) of this section, it shall be the duty of the county court of the county in which such precinct is located, prior to the first day of February, one thousand nine hundred seventy-four, to alter the boundary lines of its election precincts so that no precinct contains territory included in more than one delegate district.

(d) The house of delegates shall be composed of one hundred members elected from the delegate districts hereinafter described.

(1) The county of Hancock (except for census tracts two hundred one and two hundred two of Butler magisterial district) shall constitute the first delegate district and shall elect two delegates.

(2) The county of Brooke, and census tracts two hundred one and two hundred two of Butler magisterial district of the county of Hancock, shall constitute the second delegate district and shall elect two delegates.

(3) The county of Ohio shall constitute the third delegate district and shall elect four delegates.

(4) The county of Marshall shall constitute the fourth delegate district and shall elect two delegates.

(5) The county of Wetzel (except for enumeration districts eighteen, nineteen and twenty of Magnolia magisterial district) shall constitute the fifth delegate district and shall elect one delegate.

(6) The counties of Doddridge and Tyler, and enumeration districts eighteen, nineteen and twenty of Magnolia

magisterial district of the county of Wetzel, shall constitute the sixth delegate district and shall elect one delegate.

(7) The counties of Pleasants and Ritchie shall constitute the seventh delegate district and shall elect one delegate.

(8) The county of Wood shall constitute the eighth delegate district and shall elect five delegates.

(9) The counties of Roane and Wirt shall constitute the ninth delegate district and shall elect one delegate.

(10) The counties of Jackson, Mason and Putnam shall constitute the tenth delegate district and shall elect four delegates: Provided, that not less than one nor more than two delegates shall be elected or appointed who are residents of any single county within the tenth delegate district.

(11) The county of Cabell shall constitute the eleventh delegate district and shall elect six delegates.

(12) The county of Wayne shall constitute the twelfth delegate district and shall elect two delegates.

(13) The county of Mingo shall constitute the thirteenth delegate district and shall elect two delegates.

(14) The county of McDowell shall constitute the fourteenth delegate district and shall elect three delegates.

(15) The counties of Boone and Wyoming shall constitute the fifteenth delegate district and shall elect three delegates: Provided, that not more than two delegates shall be elected or appointed who are residents of any single county within the fifteenth delegate district.

(16) The counties of Lincoln and Logan shall constitute the sixteenth delegate district and shall elect four delegates: Provided, that not more than three delegates shall be elected or appointed who are residents of any single county within the sixteenth delegate district.

(17) The county of Kanawha shall constitute the seventeenth delegate district and shall elect thirteen delegates.

(18) The county of Raleigh shall constitute the eighteenth delegate district and shall elect four delegates.

(19) The counties of Mercer, Monroe and Summers shall constitute the nineteenth delegate district and shall elect five delegates: Provided, that not more than four delegates shall be elected or appointed who are residents of any single county within the nineteenth delegate district.

(20) The county of Greenbrier shall constitute the twentieth delegate district and shall elect two delegates.

(21) The county of Fayette shall constitute the twenty-first delegate district and shall elect three delegates.

(22) The counties of Nicholas and Webster shall constitute the twenty-second delegate district and shall elect two delegates: Provided, that not more than one delegate shall be elected or appointed who is a resident of any single county within the twenty-second delegate district.

(23) The counties of Braxton, Calhoun, Clay and Gilmer, shall constitute the twenty-third delegate district and shall elect two delegates: Provided, that not more than one delegate shall

be elected or appointed who is a resident of any single county within the twenty-third delegate district.

(24) The county of Lewis shall constitute the twenty-fourth delegate district and shall elect one delegate.

(25) The county of Harrison shall constitute the twenty-fifth delegate district and shall elect four delegates.

(26) The counties of Marion and Taylor shall constitute the twenty-sixth delegate district and shall elect four delegates: Provided, that not more than three delegates shall be elected or appointed who are residents of any single county within the twenty-sixth delegate district.

(27) The county of Monongalia, and Grant, Pleasant and Valley magisterial districts of the county of Preston, shall constitute the twenty-seventh delegate district and shall elect four delegates.

(28) The county of Preston (except for Grant, Pleasant and Valley magisterial districts) shall constitute the twenty-eighth delegate district and shall elect one delegate.

(29) The counties of Barbour and Upshur shall constitute the twenty-ninth delegate district and shall elect two delegates: Provided, that not more than one delegate shall be elected or appointed who is a resident of any single county within the twenty-ninth delegate district.

(30) The counties of Pocahontas and Randolph (except for enumeration districts two and three of Dry Fork magisterial district) shall constitute the thirtieth delegate district and shall elect two delegates.

(31) The counties of Hardy and Pendleton, and enumeration districts two and three of Dry Fork magisterial district of the county of Randolph, shall constitute the thirty-first delegate district and shall elect one delegate.

(32) The counties of Grant and Tucker shall constitute the thirty-second delegate district and shall elect one delegate.

(33) The county of Mineral (except for enumeration districts one, two, three, four, five, six and eight of Frankfort magisterial district) shall constitute the thirty-third delegate district and shall elect one delegate.

(34) The county of Hampshire, and enumeration districts one, two, three, four, five, six and eight of Frankfort magisterial district of the county of Mineral, shall constitute the thirty-fourth delegate district and shall elect one delegate.

(35) The counties of Berkeley and Morgan, and Shepherdstown magisterial district of the county of Jefferson, shall constitute the thirty-fifth delegate district and shall elect three delegates: Provided, that not more than two delegates shall be elected or appointed who are residents of any single county, or part of a county, within the thirty-fifth delegate district.

(36) The county of Jefferson (except for Shepherdstown magisterial district) shall constitute the thirty-sixth delegate district and shall elect one delegate.

(e) Regardless of the changes in delegate district boundaries made by the

provisions of subsection (d) of this section, the delegates elected at the general election held in the year one thousand nine hundred seventy-two shall continue to hold their offices as members of the house of delegates for the term, and as representatives of the county or delegate district, for which each thereof, respectively, was elected. Any appointment made prior to the first day of December, one thousand nine hundred seventy-four, to fill a vacancy in the office of a member of the house of delegates shall be made for the remainder of the term, and as representative of the county or delegate district, for which the vacating delegate was elected or appointed.

(f) If any provision or proviso of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions, provisos or applications of the section, and to this end the provisions and provisos of this section are declared to be severable.

FILED
FEB 18 1975
MICHAEL RODAK JR. CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 74-1031

STATE OF WEST VIRGINIA, EX REL,
WALLACE L. FILES,

Petitioner.

vs.

EDGAR F. HEISKELL, III,
SECRETARY OF STATE OF WEST VIRGINIA,
IN HIS OFFICIAL CAPACITY,
AND ALLEN E. GOLDSTROM,

Respondents.

PETITION TO EXPEDITE CONSIDERATION
FOR WRIT OF CERTIORARI

The undersigned, Clarence E. Martin, Jr., a member of the bar of this Court and attorney for the petitioner herein, does hereby petition the Court to expedite consideration of the Petition for Writ of Certiorari simultaneously filed herewith for the following reasons:

1. The question at issue here involves the constitutional validity of a reapportionment statute of the State of West Virginia, Code 12-2(d)(35), adopted in the year 1973; assuming that said Petition for Writ of

Certiorari would be granted and this proceeding docketed for a full hearing, it would not, in the ordinary course be considered until the October, 1975 term.

2. The term for which the petitioner contends he was elected began on the 1st day of January, 1975, and ends on the 1st day of January, 1977; the Legislature of West Virginia is presently in session for a limited sixty-day session, and with the exception of special sessions, if any, will not meet again until January, 1976 for a limited sixty-day session, consequently, if this matter is not heard and disposed of before this Court until the October term, the right of the petitioner to be seated as a member of the House of Delegates of West Virginia might become moot, insofar as he is concerned, because the term for which he will have been elected, assuming that the reapportionment statute is unconstitutional, will have practically expired.

3. During the time that the petitioner is not seated as a member of the House of Delegates of the State of West Virginia, his salary and other emoluments to which he would be otherwise entitled, if said reapportionment statute is invalid, are being paid to the respondent, Allen R. Goldstrom, and the petitioner is being deprived of the benefits thereof, and cannot be recovered by him.

WHEREFORE, your petitioner prays that consideration of the Petition for

a Writ of Certiorari simultaneously filed herewith be expedited and assuming it is granted, be heard by this Honorable Court and passed upon, as promptly as possible.

Attorney for Petitioner